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Remark:

(A) Background of invention:

The application was originally filed on 10/09/1998, a CIP of application 08/538,426 filed 10/02/1995. The examiner process had been suspended twice due to internal issues of the USPTO. Each suspension last for several years. By the time the application was filed, adequate disclosure of pre-computer activities and post-computer activities were the standard qualifiers for an application to fulfill the requirements of 35 U.S.C. 101. As the application had adequately fulfilled the requirements of 35 U.S.C. 101 by the time the application was filed (emphasized), the rest of the specification had been focused into discussing the key novel feature, the improvement of the table format programming features. The specification and claims of the subject application had adequately recited the pre-computer activities and post computer activities that fulfilled the 35 U.S.C. 101 requirement by the time the application was filed. The subject application is currently rejected on 35 U.S.C. 101 based on a 2007 Fed Court ruling In Re Bilski. In order to comply with the 2007 court ruling requirement, the applicant tried several times to amend the specification to update the definition of the subject term "programming tool" according to the following patent rules principle:

- (1) MPEP 2111.01 I - *Plain Meaning [R-5], the words of a claim must be given their plain meaning unless such meaning is inconsistent with the specification*, wherein interpretation of the common term "programming tool" which had been recited as a design to interface between programmers and computers.
- (2) MPEP 2163.07(a) *Inherent Function is not new matter*, wherein the term tool inherently is a "programming system (comprising of hardware and software) for actually able to interface between a programmer and computer"
- (3) MPEP 2163.07 I *Rephrasing is not new matter*, wherein the amended definition of the term "programming tool" was merely a rephrasing of the workable system that can actually interface between a programmer and a computer as recited in the original specification.

After several rounds of effort and RCE filings, the entry of definition of the term "programming tool" had been declined to be entered due to new matter issue. Based on her personal opinion after reading the subject application, the examiner insisted the term

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"programming tool" is to be interpreted as a "software". Accordingly the amended definition of the term "programming tool" is a new matter and the amendment was declined to be entered.

(B) Objections:

(1) The examination process was firstly objected for using a 2007 In re Bilski standard to measure the 35 U.S.C. 101 compliance of an application filed 12 years ago, wherein the application had met with the 35 U.S.C. 101 compliance by the time the application was filed. The shifting of standard is particularly annoying and unfair because the delay of examination was due to lack of PTO diligence. The examiner was recommended to review with PTO expert how to handle an old time application which had comply with patent rules requirements when it was filed 12 years ago, and acted by a new recent new standard, wherein the delay of examination was due to PTO internal problems. The examiner was further requested to review with internal expert if courtesy is proper to allow the amendment of specification according to quoted MPEP 2111.01 I, MPEP 2163.07(a) and MPEP 2163.07 I quoted in section (A) herein.

(2) The examination process was also objected because upon repeated request, the office action still failed to explain the reason when the term "programming term" is proper to be interpreted as a piece of "software", then how can a piece of software (with an accompanying hardware system) be able to actually capable of interfacing between a programmer and a computer as quoted in the original specification? According to MPEP 2111.01 I, the interpretation of the term "programming tool" as a piece of software by the office action was improper because it is inconsistent with the recitation of the original software.

(3) While the office action insisted that the amended inherited definition of the term "programming tool" is improper, the examination process was then objected for failure how the quoted MPEP 2163.07(a) and MPEP 2163.07 I as legal ground of supporting the amendment to provide a proper inherited definition of the term "programming tool" were improper?

(C) Demand of an affidavit:

Listed below is a quotation from 37 C.F.R. 1.107(b):

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When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Since the original specification never explicitly recited that the term "programming tool" is a piece of software and that the office action never provide evidence to show how this interpretation was supported, this interpretation seems to be a personal opinion of the examiner. Accordingly, applicant courteously requested that if the rejection is maintained, the Examiner provide an affidavit under 37 C.F.R. 1.107 (b) providing citation regarding level of skill in the art and why it is appropriate to interpret the term "programming tool" to be a piece of software.

(D) Changing direction to recitation of claims:

Although the applicant believed that he had solid legal ground according to MPEP 2111.01 I, MPEP 2163.07(a) and MPEP 2163.07 I quoted in section (A) herein. The applicant wished to cooperate with the examiner. If the examiner is able to provide reasonable evidence for the objections in section (B) herein, be able to provide an affidavit requested in section (C) herein; and therefore to withheld the declination of the previous entry of specification amendment as new matter, the examiner is respectfully requested to decide if the proposed amendment of specification and claims herein are to be entered. This is to save time and cost for filing further RCE, and prevent further impact to the very limited remaining term of this patent application, The proposed amended of specification was directed to cancel the portion of amendment interpreted by the previous office action as new matter. The proposed amendment of the claims was directed to replace the term "programming tool" with a general term "system", and the hard ware portion of the claimed "system" was derived from the disclosure of the original specification. Since specific hardware had been included into the "system" of the rejected claims, technically the ground of rejection under 35 U.S.C. 101 should had been cleared.

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(E) Original recitation of the specification of the FWC application dated 01/30/2003.

Listed below are the quotation of the original specification about the hardware included into the "system" of the amended claims:

(a) Page 7, lines 27-29:

In the later case, the compiling computer serves as a tool, or work station to compile the table format oriented program intended to run in another computing devices, such as embedded controllers, or third party computers.

(b) Page 10, lines 17-19:

The compiling process can be conducted at the computer running the task or at a separated computer set up for the programming development or compiling process.

(c) Page 11, lines 4-6:

In addition to computers, other supporting hardware required to support the invented technology are the debugging hardware, communication links such as cables, communications ports, hubs and networks as defined in the specification.

(d) Page 15, lines 26-29:

However, when the composed program is printed, it is preferable for the compiler or editor to print out the program listing with the official expressions so as to facilitate the reading of program listing by other people. A similar application concept can be extended to a program editor.

(e) Page 15, line 31 to page 16 line 1:

.....so the user can have a choice for the program being displayed or printed in the official form or custom form.

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(F) Sincere thanks for the courteous support of the examiner.

The remaining terms of the subject application is now very limited, we are heading for burning up the twenty years term for the subject application by PTO internal delay and excessively lengthy examination process. In accordance to MPEP 707.07(j), courtesy of the examiner to help propose suitable specification amendment for fulfilling the technical requirement of 35 U.S.C. 101, without affecting the effective scope of the subject claims is respectfully requested. In the enxt office action, the examiner is respectfully requested to notify if the proposed amendment of specification and claims had been entered?

[End of Remark]